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OVERVIEW OF THE LEASE PURCHASE TECHNIQUE IN PWC

JULY 1985

Canada

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1. EXECUTIVE SUMMARY

.1 PURPOSE OF THIS DOCUMENT

.1 The techniques of Crown-construct, Leasing and Purchase of property in Public Works are essentially well documented and understood and have been refined over many years of use. The history of Lease Purchase is much shorter and there is not, therefore, the same breadth of comprehension nor the same extent of available information and there exist, as a result, many misconceptions.

.2 The purpose of this document is to provide information pertaining to the Lease Purchase technique in Public Works Canada. It provides an overview of Lease Purchase by explaining what it is and how it works including its strategies, processes and modalities. It places Lease Purchase within the context of other techniques and, it identifies and examines some specific issues surrounding Lease Purchase. The document can be utilized as a source of information both within and outside the Department.

.3 This document represents a consolidation of Departmental views and is a synopsis of the current PWC know-how and of the most recent procedures adopted by PWC.

.2 DELIVERY MODES FOR CROWN ACCOMMODATION

.1 Accommodation for Crown use can be provided through a number of delivery modes. The prime two characteristics which constitute a delivery mode are the financing means and the design and construction control models.

.2 The basic categories of the financing means are:

.1 Leasing
.2 Crown Construct
.3 Crown Purchase
.4 Lease Purchase

.3 Design and construction control models are defined by the varying degree of direct control that PWC exerts during the design and construction process. The degree of control exercised by PWC is directly related to the extent or stage of the development of technical documentation prepared under direct PWC control and on the extent of construction supervision under PWC control. The basic models currently in use, or identified by PWC, are:

.0 No PWC Input
.1 PWC Performance Specification
.2 PWC Concept Design
.3 PWC Final Design Development
.4 PWC Full Plans and Specifications
.5 PWC Partial Construction
.6 PWC Full Construction

.4 The choice of models for a particular project is determined by the degree of design and quality control essential to that project. Building type is the prime factor which influences the degree of control that is necessary. Additionally, specific project requirements and the advantages and disadvantages of the various models for a given situation will also influence the model to be selected.

.5 Financing means and models are separate characteristics which constitute the delivery mode. For example, Lease Purchase can be achieved by utilizing any one of Models 0-5 and Crown-Construct can be achieved by utilizing any one of Models 1-6.

.6 In order to determine the most appropriate mode of delivery for a specific project, one of the first steps is to identify the potential models which might be suitable to that project and then to identify the appropriate financing means which can be applied to those models. This often provides, in the first instance, a variety of possibilities for a given project.

.7 A more detailed level of analysis is then required to ascertain which mode of delivery, i.e. which financing means and model, provides the best value and is the most appropriate solution for a specific situation. This requires qualitative and quantitative analysis of issues such as:

.1 Analysis of potential models
.2 Financial analysis for the various options
.3 Availability of Capital
.4 Magnitude of the project
.5 Long term or short term requirements
.6 Mandatory ownership
.7 Achievement of Broader Government Objectives
.8 Specific project requirements
.9 O&M options
.10 Developer interest
.11 Land Capacity vs Crown requirements
.12 Mixed urban development requirement
.13 Requirement for full PWC Supervision
.14 Time

.3 LEASE PURCHASE

.1 Lease Purchase is a means of acquiring accommodation at a pre-determined rent or rent-formula for the full period of the lease. The rent is sometimes fixed for the whole term but usually is adjusted according to a pre-established formula reflecting the best available current financing interest rates.

.2 The Crown has an option to purchase the building at certain periods during the lease and at the end of the term of the lease at predetermined amounts. Where the Crown owns the land and has granted a Ground Lease, the Crown automatically becomes the owner of the building at the end of the Ground Lease. It is fundamentally a long term lease with the option to purchase the building constructed and financed by the developer.

.3 Lease Purchase is applicable to new construction, existing developer buildings and as well to major renovations. It is most widely applicable to medium size projects which are not highly specialized and to projects for which there are long term requirements.

.4 In most existing Lease Purchase transactions, the Crown has owned the land and leased it to a developer for a specific term. However, Lease Purchase transactions can also be achieved on privately owned land.

.5 In the Lease Purchase technique the developer constructs and (depending on the model) in many instances designs a building, at his expense and to the Department's satisfaction, through an established process. The basis for the design/construction is the information and instruction provided by PWC in the Proposal Call.

.6 The developer is normally required to enter into a management agreement for the first ten years of Crown occupancy of the building.

.7 The Department's current knowledge of Lease Purchase, although it is a relatively new technique, is considerably well advanced. However, legal and technical documentation, policies, processes and standards are continually evolving in order to enhance the Lease Purchase technique in PWC.

.8 The first Lease Purchase transaction in PWC occurred in 1975. Between 1975 and 1985 there have been a total of eleven Lease Purchase projects.

.4 SUMMARY OF MAIN ADVANTAGES OF LEASE PURCHASE

.1 Lease Purchase vs Leasing

.1 In Lease Purchase the rent is either fixed or adjusted according to a pre-established formula, whereas, in standard leasing, after each term, the rent is adjusted according to the current market which, historically, has increased at the rate of inflation or faster than the rate of inflation. Therefore, if market values increase, Lease Purchase is advantageous and less costly to the Crown.

.2 In standard leasing arrangements, tenant improvements required by and paid for by the Crown, such as partitioning and carpets, belong to the building owner and are often reflected in new rental rates for future terms. In Lease Purchase such improvements are included in the original rent but not reflected in the rent adjustments.

.3 Lease Purchase provides the option for the Crown to purchase the property at certain intervals and, where a Ground Lease has been granted by the Crown, the property including the building reverts to the Crown at the end of the term of the Ground Lease. The opportunity for reverting to the Crown is not provided in Leasing and the option to purchase is not standard in Leases.

.4 There is greater potential for quality control in Lease Purchase than there is in Leasing.

.2 Lease Purchase vs Crown Construct

.1 Lease Purchase does not require the same major capital expenditures associated with Crown Construct.

.2 Experience indicates that Lease Purchase is a faster way of delivery than Crown construct, when the comparison is made from the same base. i.e. from the stage where contracts are signed.

.3 The Lease Purchase technique enables the Government to achieve an economic impact (e.g. employment stimulation) without major expenditure of Capital funds.

.4 Lease Purchase provides the potential to realize mixed use development or a development which is greater than only the Crown requirement.

.5 Although a true comparison between the cost of Crown Construct and Lease Purchase is difficult to achieve, examples of analysis carried out by the Department indicate that Lease Purchase over 35 years is generally the same cost to the Crown as Crown Construct.

.6 Lease Purchase as an alternative to Crown-construct can be considered when one or more of the following are present:

- Capital is not available in the short term;
- comparative analysis at the moment of investment decision clearly demonstrates that the Lease Purchase means is not more costly to the Crown than Crown Construct;
- there is a need and potential to realize mixed use urban development schemes without the commitment of large capital funds;

- the potential for development is greater than only the Crown requirement;
- there is sufficient developer interest;
- there is no need for immediate ownership.

.5 SUMMARY OF MAIN DISADVANTAGES OF LEASE PURCHASE

.1 Lease Purchase vs Leasing

.1 There is a risk that if market rents decrease and interest rates do not decrease, then the rent being paid under a Lease Purchase agreement could be higher than market rents. However, history indicates that this is only a temporary risk.

.2 Lease Purchase is a long term commitment to expend public funds and commits future governments to fixed expenditures which short term leasing does not do.

.3 Leasing can, in most instances, satisfy accommodation needs more quickly than Lease Purchase.

.2 Lease Purchase vs Crown Construct

.1 Lease Purchase gives the appearance of not spending capital funds.

.2 The control of quality is somewhat more difficult to exercise through Lease Purchase than it is through Crown-construct as PWC does not supervise construction, nor does PWC approve working drawings and specifications when these are prepared by the Developer.

.3 Lease Purchase does not satisfy requirements for immediate ownership.

.4 Lease Purchase does not lend itself to as broad a range of projects as does Crown-construct.

.6 EXTERNAL CONCERNS RE LEASE PURCHASE

.1 Bill C13 amending the Public Works Act and Public Lands Grants Act has removed any doubt concerning the legality of Lease Purchase in relation to the issue of the disposition of land or interests in land that may or may not be required for public purposes.

.2 It is the opinion of PWC Legal Services, based on the conclusions of the Department of Justice and as further demonstrated by lenders in providing mortgages, that all Lease Purchase transactions to date do not constitute a borrowing by the Crown and do not, therefore contravene Section 36 of the Financial Administrative Act.

.3 The Auditor General's concerns and criticisms and the PWC response are contained in Section 8.3. The Department has or is in the process of taking action regarding the issues raised.

2. LEASE PURCHASE - WHAT IT IS

.1 BACKGROUND

.1 Means of financing accommodation for Crown use have included Leasing (long and short term), Crown Construct or Crown purchase. Over the years, more innovative techniques have been introduced within each of these basic categories. For instance, the Crown-construct approach has been expanded to include not only the traditional lump sum contract but also other concepts such as project management, phased construction, design-build, etc.

.2 In the past decade, the Lease Purchase technique has been utilized by PWC as an additional means of financing the procurement of accommodation. The process of delivery through Lease Purchase, although containing elements both from leasing techniques and Crown-construct techniques, is in many ways different from both.

.3 Traditionally, the preference for acquiring accommodation was through Crown-construct. However, in the 1960's and 1970's in particular, there was, for a number of reasons, including the shortage of Capital funds, a massive move to leasing. The decision to promote the Lease Purchase strategy was, therefore, primarily as an alternative to long term leasing.

.4 The Lease Purchase technique has been adopted increasingly by PWC to satisfy the needs of the Accommodation Program.

.2 LONG-RANGE ACCOMMODATION INVESTMENT STRATEGY (LRAIS)

.1 The Long-Range Accommodation Investment Strategy was approved by Cabinet (June 1981) and an update of Interim Accommodation Investment Strategy approved by Treasury Board (April 1982).

.2 The PWC Long-Range Accommodation Investment Strategy (LRAIS) document, June 30, 1982 included statements pertaining to Lease Purchase. It noted that Lease Purchase be used as an instrument for putting in place a major expansion of the Crown-owned inventory as a means of replacing costly leased accommodation (particularly office space) and in order to avoid highly expensive future leases while at the same time improving the federal presence in Canadian communities and stimulating employment.

.3 Approval to update the Long Term Capital Plan (LTCP) for the PWC Accommodation Program, including Lease Purchase projects, is expected in 1985.

.3 DEFINITION

.1 Lease Purchase is a means of acquiring accommodation at a predetermined rent or rent-formula for the full period of the lease. The rent is sometimes fixed for the whole term but usually is adjusted according to a pre-established formula reflecting the best available current financing interest rates.

.2 The Crown has an option to purchase the building at certain periods during the lease and at the end of the term of the lease at predetermined amounts. Where the Crown has granted a Ground Lease, the Crown automatically becomes the owner of the building at the end of the Ground Lease.

.3 It is different from outright ownership of property in that a developer mortgages the property and the Crown pays rent for the property through lease payments. It is, fundamentally, a long term lease with the option to purchase the building financed and constructed by the developer.

.4 APPLICABILITY

.1 The Lease Purchase technique is applicable to new construction, existing developer buildings and as well to major renovations. In the past it has been applied primarily to new buildings and a small number of existing developer buildings but it has not been applied to date to alterations.

.2 It has been utilized by PWC primarily for office buildings or combined office/commercial retail functions. Although it can be applied to all types of building functions, there may not be sufficient developer interest in highly specialized buildings.

.3 Lease Purchase lends itself to combined use by the Crown and by others. In some instances where land capacity permits and where it is appropriate, the developer can, in addition to the space required by the Crown, construct additional space for his own use or use by others.

.4 The Lease Purchase technique is most widely applicable to medium size projects having long term requirements. As there are more developers who are experienced in medium size projects than in major projects, this offers the widest range of interested and competent bidders. Small projects are generally not of as much interest to developers.

.5 LAND OWNERSHIP

.1 In most PWC Lease Purchase transactions to date, the Crown has owned the land. However, Lease Purchase transactions can also be achieved on privately owned land. (Refer to Section 6.4)

.6 STANDARD CONDITIONS IN A LEASE PURCHASE TRANSACTION

.1 When a developer is selected and approval received to proceed, a Development Agreement between PWC and the Developer is executed.

.2 Where the Crown owns the land, it grants a long term Ground Lease to the developer for a specific term (usually 50 years plus the period of construction). As a matter of prior practice, the rent for the land has been for a nominal sum for as long as the Crown is a tenant under the Building Lease.

.3 The developer constructs and in many instances designs a building at his expense and to the Depa tment's satisfaction through an established process (Refer to Section 5). The basis for the design/construction is the information and instructions provided by PWC in the Proposal Call.

.4 At the time of the execution of the Development Agreement the developer agrees to grant to the Crown a long term Building Lease for the space required by the Crown, for a term of usually 35 years. The rent is set according to a pre-established formula, based on the rent quoted by the developer in his proposal, and usually adjusted periodically (normally at five year intervals) to reflect the best available current financing interest rates. Upon completion of construction the documentation relating to the Building Lease is finalized.

.5 The developer grants to the Crown an option to purchase the building at certain intervals during the term of the building lease (usually at the end of the 20th year and at the end of the Building Lease). The price for the option to purchase is either fixed or a formula established at the outset as part of the Development Agreement. In any case, where a Ground Lease has been granted, the Crown automatically becomes the owner of the building constructed by the Developer at the end of the ground lease, at no cost to the Crown. (Refer to Section 6.6)

.6 The developer is normally required to enter into a Management Agreement for the first ten years of Crown occupancy of the building. The cost to the Crown for the management, operation and maintenance is normally based on a fixed price as stipulated in the Development Agreement and is adjusted annually using the Consumer Price Index. Additionally, under the "Management Agreement", the developer is responsible for the cost and execution of all repairs for the first ten years of Crown occupancy. (Refer to Section 6.5)

.7 **CURRENT KNOWLEDGE**

.1 The Department's current knowledge of Lease Purchase, although it is a relatively new technique, is considerably well advanced and PWC is frequently consulted by other governments and agencies both within and outside of Canada.

.2 Existing PWC Lease Purchase projects are described in Section 7. The first Lease Purchase transaction occurred in 1975. Between 1975 and 1985 there has been a total of eleven Lease Purchase projects.

.3 Legal and technical documentation, policies, processes and standards are continually evolving based on experience gained in order to enhance the Lease Purchase technique and to ensure a consistent approach throughout the Department.

3. DELIVERY MODES FOR CROWN ACCOMMODATION

.1 DELIVERY MODE

.1 The delivery mode is the overall method for the implementation of Crown accommodation. The prime two characteristics which constitutes the delivery mode are the financing means and the design and construction control models. These are described below.

.2 FINANCING MEANS

.1 The basic categories of the ways in which the procurement of accommodation for Crown use can be financed are:

1. Leasing
2. Crown Construct
3. Crown Purchase
4. Lease Purchase.

.2 Within each of the above there are sub-categories which define these categories more precisely. For example: Leasing can be either short-term or long-term; Crown-construct can be carried out by lump sum contract, phased packages, design-build, etc.; Lease Purchase can be achieved through purchase options at varying periods.

.3 DESIGN AND CONSTRUCTION CONTROL MODELS

.1 Models are defined by the varying degree of direct control that PWC exerts during the design and construction process. The degree of control exercised by PWC is directly related to the extent or stage of the development of technical documentation under direct PWC control and on the extent of construction supervision under PWC control.

.2 The choice of models for a particular project is determined by the degree of design and quality control essential to that project. Building type is the prime factor which influences the degree of control that is necessary. Additionally, specific project requirements and the advantages and disadvantages of the various models for a given situation will also influence the model to be selected.

.3 The basic models currently in use, or identified by PWC are: -

0. No PWC input
1. PWC Performance Specification
2. PWC Concept Design
3. PWC Final Design Development
4. PWC Full Plans and Specifications
5. PWC Partial Construction
6. PWC Full Construction

.4 Section 4 and Chart II in Section 4 provide more detailed explanation of models and their advantages and disadvantages.

.4 MEANS FOR DETERMINING THE APPROPRIATE DELIVERY MODE

.1 The process for determining, for each Crown accommodation requirement, the most appropriate mode of delivery requires analysis and evaluation of a number of intra-related but separate factors.

.2 One of the first steps is to identify the potential models which might be suitable to a project (as per the following Section 4) and then to identify the appropriate financing means which can be applied to those models. This first step often provides a variety of possibilities for a given project.

.3 It should be stressed that the financing means and the models are separate characteristics which constitute the delivery mode. Lease Purchase can be achieved by utilizing any one of Models 0-5 and Crown-construct can be achieved by utilizing any one of Models 1-6. For instance, Model 3 (PWC Final Design Development Documents) has been utilized both for Crown Construct (Aviation Museum) and for Lease Purchase (GOCB, Shediac, N.B.).

.4 Chart I at the end of this Section is intended to illustrate graphically the possible combinations of models and financing means to establish options for delivery modes. This matrix can be developed further to provide a framework for the examination of the option available.

.5 Referring to Chart I, an example would be that if a particular project lends itself to a PWC performance specification (Model 1), this could be achieved either by means of a long term lease (build to lease), or Crown-construct or Lease Purchase.

.6 When the potential options for financing means and the potential models for a specific accommodation project have been identified, a more detailed level of analysis is then required, taking into consideration other factors, to ascertain which mode of delivery, i.e. which financing means and model, provides the best value and is the most appropriate solution. This requires a qualitative and quantitative analysis of issues such as those noted below:

.1 Analysis of potential models

The advantages and disadvantages of models are discussed in Section 4.

.2 Financial analysis for the various options

Financial analyses of the various financing means are discussed in Section 6.2 and cost related comparisons of Lease Purchase vs other financing means are discussed in Section 6.3.

.3 Availability of Capital

If Capital is not available in the short term then Crown Construct or Crown Purchase would be eliminated as options.

.4 Magnitude of the project

Lease Purchase does not normally lend itself to small projects, Leasing may not be appropriate for major projects and Crown Construct is applicable to all size of projects. Refer to Section 2.4.4

.5 Long term or short term requirements

Short term accommodation requirements are generally best satisfied by Leasing. Lease Purchase, Crown-construct or Purchase are appropriate to long term requirements.

.6 Mandatory ownership

If there is a necessity or desire on the part of the Crown for ownership rather than to lease then Leasing would be eliminated as an options and if there is a requirement for immediate ownership then Lease Purchase would be eliminated.

.7 Achievement of Broader Government Objectives

An analysis is required to determine which model and which financing means will best achieve Broader Government Objectives.

.8 Specific project requirements

Individual and specific needs or the locale may influence the mode of delivery.

.9 O&M options

Options for operation of maintenance and life cycle cost, although not necessarily influencing the decision on the mode of delivery, need to be examined.

.10 Developer interest

Lease Purchase may not be of interest to developers for specialized buildings, or for other reasons, and in specific circumstances there may not be sufficient interest by developers to provide an adequate degree of competition.

3. DELIVERY MODES FOR CROWN ACCOMMODATION

.11 Land capacity vs Crown requirements

If the Crown owns the land and its requirements for space are less than the land capacity (i.e. FSI) then it may be advantageous to allow a developer to construct space for his own or other use in addition to the Crown requirements. In that case a Lease Purchase, Model 1 solution could be the most appropriate.

.12 Mixed urban development

If there is a desire on the part of the Crown to realize mixed urban development schemes, without the government having to commit large capital sums, or without having to manage private sector tenancies this could be achieved through the Lease Purchase, Model 1, with the leverage of the government's commitment to occupy space in such a project.

.13 Requirements for full PWC Supervision

In Lease Purchase, the Crown does not carry out full Construction supervision, as it does in Crown-construct. The Crown carries out an inspection only to ensure adherence to the contract. (Refer to Section 5.7) If there is a necessity for full PWC Supervision, such as in buildings having a high security requirement, then Lease Purchase may not be appropriate.

.14 Time

The issue of time is discussed in Section 6.7. The degree of urgency for occupancy of an accommodation can have a bearing on the mode of delivery.

.5 CHART I
DELIVERY MODES FOR CROWN ACCOMMODATION

graphic illustration of the possible combinations of models and financing means to establish options for delivery modes.

DESIGN & CONSTR. CONTROL MODELS	FINANCING MEANS			
	LEASING*	CROWN CONSTRUCT	CROWN PURCHASE	LEASE PURCHASE
0 No PWC input	X	N/A	X	X
1 PWC Performance Specification	X	X	N/A	X
2 PWC Concept Design	X	X	N/A	X
3 PWC Final Design Development	X	X	N/A	X
4 PWC Full Plans and Specification	X	X	N/A	X
5 PWC Partial Construction	N/A	X	N/A	X
6 PWC Full Construction	N/A	X	N/A	N/A

* In Leasing, Models 2, 3, 4 normally relate to build-to-lease. Model 1 can be build-to-lease utilizing design and construction performance specification or lease of an existing building utilizing PWC Standard Leasing documents.

4. DESIGN AND CONSTRUCTION CONTROL MODELS

.1 BASIC MODELS

.1 The previous section (Section 3) examined delivery modes for crown accommodation of which one prime characteristic is the design and construction control model. This section first describes basic models which are applicable to all financing means, discusses advantages and disadvantages of the various models and then provides additional comments in relation to Lease Purchase specifically.

.2 The basic models currently in use or identified by Public Works Canada are shown and described on the following Chart II. These models are applicable to both new construction and to alterations. As previously stated, the models are defined by the varying degree of direct control that PWC exerts during the design and construction process. The degree of control exercised by PWC is directly related to the extent or stage of the development of technical documentation prepared under direct PWC control and on the extent of construction supervision under PWC control.

.3 The degree of design and construction control desired is the main determining factor in selecting an appropriate Model. At one end of the scale is Model 0 for which there is no design control and no PWC input. This could be the case in, for example, an existing developer building. At the other end of the scale is Model 6 for which PWC prepares full plans and specifications and provides construction supervision as in Crown-construct.

.4 The basic models noted on Chart II address the majority of projects likely to be undertaken by the Department. There can be variations in each, but the established policies, principles and process apply.

.5 It should be noted that a project can be carried out utilizing a combination of models. For instance, the architectural design could be according to Model 2 and the engineering according to Model 3.

.6 In determining which model is to be adopted, each situation needs to be considered on a case by case basis. There is not any one model which provides the ultimate solution. The advantages and disadvantages of the various Models need to be weighed for each specific circumstance. These are examined in following pages.

.7 Building type influences the degree of control desired. For instance, a virus laboratory and a general purpose office building are at opposite ends of the building type spectrum. Specialized buildings with unique requirements, such as a virus laboratory, do not generally lend themselves to the PWC Performance Specification Model (Model 1), whereas general purpose office buildings are the most appropriate for Model 1. In many instances, particularly for general purpose office buildings, there will be several possible model options for further examination.

4. DESIGN AND CONSTRUCTION CONTROL MODELS

.8 In a developer's planned building, the stage of design and construction development can range from completed construction to no design development. Depending on the control exercised by PWC, the models could range from Model 0 to Model 4.

.2 CHART II
BASIC DESIGN AND CONSTRUCTION CONTROL MODELS

Model	PWC Activity	Drawings by PWC	Specifications by PWC	Existing Examples of Lease Purchase Projects
0.	No PWC Input	None	None	. Esplanade ** Laurier, Ottawa
1.	PWC Performance Specifications	None	Performance* Specifications	. Can. Place, Edmonton
2.	PWC Concept Design	Concept Design Drawings	Primarily Performance Specifications but include some trade specifications	. GOCB, Chatham, Ontario
3.	PWC Final Design Development	Preliminary Design Drawings	Primarily Outline Trade Specifications but include some performance specifications	. GOCB, Shediac N.B.
4.	PWC Full Plans & Specifications	Full Design & Working Drawings	Full Trade Specifications	. GOCB, Scarborough, Ontario
5.	PWC Partial Construction (Sub-structure)	Full Design Working Drawing	Full Trade Specification	. 240 Sparks, Ottawa . Guy Favreau, Montreal . DVA, Charlottetown
6.	PWC Full Construction	Full Design Working Drawings	Full Trade Specification	. Applies only to Crown Construct (Not Lease Purchase)

** Developer's existing building. PWC Standard Lease Proposal Call Documents, not D&C Performance Specification, utilized.

* "Performance Specification" is a term adopted by PWC for a primarily descriptive document but which also contains some prescriptive information.

.3 ADVANTAGES/DISADVANTAGES AND DIFFERENCES BETWEEN MODELS

.1 As previously mentioned the model is defined by the extent to which design and quality control is exercised by PWC. Model 6 wherein the Crown provides all the design, from concept through to working drawings and full specifications and construction supervision, affords the maximum level of quality control.

.2 The degree to which the Crown knows in advance of a commitment to the overall final product, and can mold that product to its satisfaction, is proportionate to the extent of direct design input by the Crown. In Models 4, 5 and 6 the desired final product and design is known in advance and is fully assured, whereas in Models 2 and 3, it is known to a lesser degree and in Model 1 the final design is not known in advance.

.3 Model 0, which could be an existing developer's building, provides the advantage of immediate delivery and the knowledge of exactly the product to be acquired, but would provide little or no opportunity for incorporating special requirements nor of conforming to acceptable PWC standards.

.4 Model 1 has the potential of providing the advantage to the Department of selecting from a variety of solutions. However, it contains the risk that none of the design proposals may be acceptable or that the best financial proposal could accompany an unacceptable design or vice versa. Generally, better proposals can be expected if Model 1 is carried out in two-stages to limit the number of final proponents to a manageable group of serious contenders. The risk is diminished if a reputable firm is selected and one whose work and that of its consultants are known.

.5 A consultant selection process is normally required for models where the design is provided by the Crown. Direct design costs for consultants are incurred. In Model 1 there is no direct appointment of consultants by the Department.

.6 Model 1 has the potential of being most responsive to the advantages to be gained from use of entrepreneurial and development skills of the private sector.

.7 Model 1 evaluation of proposals are not fully competitive as a comparison is made of different design solutions and without knowledge of the end product. In the overall, the time frame advantage of one model over another is difficult to assess and needs to be considered on an individual project basis. However, Model 2 has the potential for the fastest time of delivery.

.8 Cost comparisons for the various models are difficult to ascertain. Also, in Models 1, 2, 3 the quality of the products being compared would not necessarily be the same.

.4 MODELS - SPECIFIC COMMENTS IN RELATION TO LEASE PURCHASE

.1 In Model 1, for Lease Purchase there could be a single or two stage Proposal Call and the program could be fixed (mandatory) or could be a combination of mandatory requirements plus additional space which the developer is free to provide for his own or other use.

.2 The first stage of a two stage Proposal Call is utilized primarily for Model 1 major projects in order to determine the level of interest, to solicit ideas and to prequalify and select a short-list of developers to participate in the second stage.

.3 Model 1 provides scope for development ideas and program options by the private sector.

.4 In Lease Purchase the evaluation of Model 4 is straightforward and requires evaluation of primarily financial aspects. Models 2 and 3 are also reasonably straightforward. Model 1 is the most difficult to evaluate as financial and design aspects (as well as the developer's team capability) need to be evaluated and may sometimes be irreconciliable.

.5 In Lease Purchase, the developer has a guaranteed tenant (the Crown) which can tend to diminish the developer's incentive to provide a top quality product. This can be alleviated a number of ways in the process and by Model 1 which has the potential to provide the opportunity to the developer of including space for his own marketability. This additional space can also provide potential for expansion space for the Crown.

.6 Chart III below is a simplified summary of Models 0 to 5 in Lease Purchase and demonstrates the extent of PWC Control in design and construction. Maximum control occurs where PWC input is the greatest. It also demonstrates the points at which a developer is introduced in the design and construction process. Model 6 is not indicated as it does not apply to Lease Purchase.

.5 CHART III
PWC/DEVELOPER RESPONSIBILITIES IN VARIOUS LEASE PURCHASE MODELS

Stage of Design and Constr. Development	MODELS						
	0	1	2	3	4	5	
Performance Specification	Dev	PWC	PWC	PWC	PWC	PWC	
Concept Design	Dev	Dev	PWC	PWC	PWC	PWC	
Final Design Development	Dev	Dev	Dev	PWC	PWC	PWC	
Working Drawings and Specifications	Dev	Dev	Dev	Dev	PWC	PWC	
Construction	Dev	Dev	Dev	Dev	Dev	Dev	PWC

← Proposal Call issued by PWC

This Chart demonstrates the extent of PWC control in design and construction for the various models for Lease Purchase and also demonstrates the points at which the Proposal Call is issued and the developer introduced in the design and construction process.

5. LEASE PURCHASE PROJECT DELIVERY SYSTEM

.1 INTRODUCTION

.1 The following is intended to provide an overview of the planning and management of Lease Purchase projects and to illustrate some key aspects.

.2 The Lease Purchase project delivery system contains elements of and similarities to the Project Delivery System (PDS). The extent of the similarities depends on the Model utilized. For instance, Model 4 approximates PDS more closely than does Model 1. Two examples of the steps in the Lease Purchase project delivery system (for Model 1 and Model 4) are given below.

.3 Lease Purchase projects are planned, implemented, operated and evaluated in accordance with those stages or portions of stages of the PDS that are applicable. The project approval process and the involvement of Headquarters functional units are linked with the PDS stages.

.2 STEPS IN THE LEASE PURCHASE PROJECT DELIVERY SYSTEM - TWO EXAMPLES

.1 Model 1 - Two Stage Proposal Call - example (PWC Performance Specification)

Stage	Product	Comments
1. Identification of Needs and Opportunities	Project Memorandum	. Same as PDS 1
2. Options analysis and selection	Feasibility Report and Corporate Control Package	. Same as PDS 2 . Under Lease Purchase feasibility Lease Purchase models are examined.
3. TB approval	Preliminary Project Approval	
4. Preparation of Stage I Proposal Call Document	Proposal Call Document	. Consists of sufficient information to define scope and intent of project and information required for pre-qualification of developers.
5. Proposal call Stage I issued	Developers' Proposals	. no design or financial submissions . proposal includes information re developers' design teams & narrative concept description.

5. LEASE PURCHASE PROJECT DELIVERY SYSTEM

	Stage	Product	Comments
6.	Evaluation of Proposals	Selection of a short-list of developers invited to participate in Stage II	. Assessment of developers' design and professional teams and of concept narrative description.
7.	Preparation of Proposal Call Stage II Document (including project definition)	Proposal Call Document	. Includes General Information and Instructions, Offer Form & Legal Documentation. . Technical Instruction consist of a PWC performance specification
8.	Proposal call Stage II issued	Developers' proposals includes Concept by Developers' Consultants and Financial Proposal	
9.	Evaluation of Proposals	Selection of one developer	. Separate financial and design quality evaluations and blending of evaluations
10.	TB approval	Effective Project approval by TB Execution of Development Agreement	. "Conditional" acceptance by PWC
11.	Final Design Development	Final preliminary design and outline trade Specification by Developer's Consultant	. Detailed negotiation and design review during the development
12.	Acceptance of Final Design Development by PWC	Granting of Ground Lease	. Constitutes contractual commitment to developer.
13.	Construction Documents	Full design working drawings and full trade Specification by Developer's Consultant	
14.	Construction	Completed Structure by developer	
15.	Fitting up and Commissioning	Building ready for occupancy	

.2 Model 4 - example
(PWC Full Plans and Specifications)

	Stage	Product	Comments
1.	Identification of Need and Opportunities	Project memorandum	. Same as PDS 1
2.	Option Analysis and Selection	Feasibility Report and Corporate Control Package	. Same as PDS 2 . Under lease purchase feasibility, Lease Purchase models are examined
3.	TB approval		
4.	Project Definition	Project brief to PWC Consultant	. Consultants appointed by same means as for Crown Construct
5.	Concept Design	Concept design drawings and outline specification by PWC Consultant	. Similar to middle of PDS 4
6.	Final Design Development	Final preliminary design and outline trade specification by PWC Consultant	. Similar to PDS 4
7.	Construction Documents	Full design working drawings and full trade specification by PWC Consultant	. Similar to PDS 5
8.	Preparation of Proposal Call Document	Proposal Call Document	. Includes General Information & Instructions, Questionnaire, Offer Form & Legal Documentation. . Technical information consists of the full design working drawings and full trade specification by PWC consultant
9.	Proposal call issued	Developers' proposals	. No design submission

.2 Model 4 - example (Cont'd)
(PWC Full Plans and Specifications)

Stage	Product	Comments
10. Evaluation of Proposals	Selection of one developer	. Selection primarily on cost
11. CPPC approval		
12. TB approval	Execution of Development Agreement and granting of Ground Lease	
13. Construction	Completed Structure by developer	
14. Fitting up Commissioning	Buildings ready for occupancy	

.3 CONTENTS OF PROPOSAL CALL DOCUMENT

.1 Developers' proposals are submitted in response to the Proposal Call Document issued by PWC. The Proposal Call Document generally includes for all Models:

.1 General Information and Instructions

- Introduction and General Project Information
- Instructions to Developers

.2 Questionnaire

.3 Offer Form

- Offer Form
- Unit Price Table

.4 Lease Purchase Legal Documentation

.1 Development Agreement
.2 Site Legal Description
.3 Ground Lease
.4 Design and Construction Requirements
.5 Building Lease
.6 Security Deposit Agreement
- Warranty Agreement

.7 Management Agreement
a) Building Cleaning Specifications
b) Environmental Standards
c) Operating Instruction Manual
d) Preventative Maintenance Manual

.5 Technical Instruction (Contents vary depending on Model)

.2 The Stage in the delivery process at which the Proposal Call is issued, and the developer introduced into the process, is illustrated in Chart III Section 4. It varies with the Model utilized.

.4 SUMMARY DESCRIPTION OF CONTENTS OF PROPOSAL CALL

.1 General Information and Instructions

.1 The Introduction and General Project Information includes a description of the intent of the Proposal Call, a project summary, overall objectives, synopsis of the process and information pertaining to inquires and communication with the Department by the developers.

.2 The Instructions to Developers includes a description of the general and specific submission requirements, the intended means for evaluation of developers' proposals and closing date requirements.

.2 Questionnaire

.1 The Questionnaire is utilized by PWC for the purpose of assessing the capability of the developers' teams which include the developers, the design teams, the construction teams and the building management teams.

.2 The Questionnaire provides a detailed description of the information that the developers must submit pertaining to the experience and qualifications of the firms and individuals who will participate in the project and also the project team organization structure.

.3 In a two-stage Proposal Call, the questionnaire is included only in the first stage.

.3 Offer Form

.1 The Offer Form is a document included in the Proposal Call which stipulates the conditions of the offer and the cost information that the developers are to complete on the form and submit as part of their proposal.

.2 The Offer Form is the official document signed by the developers as part of their proposal. It is here that they submit their costs and where they sign their agreement to meet all the conditions of the Proposal Call.

.3 Generally the cost information requested from developers will include: the annual rent for the first portion of the term; capitalization rate as a percentage of interest rate of bonds; the amount that the annual rental amortizes; the amount to exercise the purchase option at end of term; fee to be paid under the management agreement; unit prices (according to unit price table).

.4 The conditions stipulated in the offer relate to such matters as: a stipulated provisional cost allowance; unit prices; enclosure of drawings and specifications; enclosure of a Bid Deposit; time for acceptance of the offer; terms and conditions of the Legal Documentation; other Standard General Conditions.

.5 The Unit Price Table provides a description of the classes of labour and materials to be supplied and installed and the estimated quantity.

.4 Legal Documentation

.1 The Development Agreement is the official "Contract" between the Crown and a developer. It includes an agreement by the developer to provide a Security Deposit for a specified amount and to agree to the terms and conditions of the Ground Lease, Design and Construction Requirements, Building Lease, Security Deposit Agreement and Management Agreement.

The Development Agreement is executed upon Effective Project Approval by Treasury Board.

.2 A Site Legal Description including a survey description is provided when the Crown owns the Land. Easements and any other restrictions that may limit the use of the site are indicated.

.3 The Ground Lease is the agreement between the Crown and the developer regarding the terms and conditions on which the Crown leases the land to the developer (in instances where the Crown owns the land). The term of the Ground Lease is normally for 50 years plus the period of construction.

The terms and conditions include such matters as: - the rent amount (has usually been $1.00); the rent after the termination of the Building Lease according to a stated formula to reflect fair market values; insurance; access to the site; termination rights; indemnity; assignment of sub-lease etc.

The Ground Lease is executed when required conditions have been met. For example, in Model 1, the Ground Lease is executed when the developer's Final Design Documents have been accepted by PWC.

.4 The Design and Construction requirements describe the obligations of the developer for the preparation of design and construction documents and for the construction. It also includes such matters as: - description of the process; changes and cost of changes; certification of construction documents and construction; construction supervision; return of security deposit and fitting-up design and construction requirements.

This document is not signed separately but is included as a Schedule to the Development Agreement.

.5 The Building Lease is the agreement between the developer and the Crown regarding the terms and conditions on which the developer leases the accommodation to the Crown.

The terms and conditions include: - the duration of the lease (normally 35 years); the amount of rent for the first term and the rental formula for adjusting of all future terms; taxes; insurance; repairs and maintenance; assignment of sub-lease; fitting-up schedule and responsibilities of the developer; Crown's options to purchase and the pay-out formula.

Upon completion of the construction, the documentation relating to the Building Lease is finalized.

.6 The Security Deposit Agreement is the agreement between the developer and the Crown that the developer will deposit to the Crown a stipulated amount, prior to the date of completion, as collateral security to cover the obligations under the warranty agreement. It includes conditions pertaining to interest, claims and return of the deposit.

The Warranty Agreement is the agreement between the developer and the Crown, that the developer guarantees that the work is free from structural and non structural defects; that the developer will make good any structural defects for a specified period (usually 10 years) and non structural defects for a specified period (usually 2 years); that the developer will fulfill all the obligations under the Management Agreement.

Upon completion of the construction; the documentation relating to the Security Deposit and Warranty Agreement are finalized.

.7 The Management Agreement is the agreement between the developer and the Crown regarding the developer's obligations which include: the requirements in the annexes to the Management Agreement pertaining to Building Cleaning Specifications, Environmental Standards, Operating Instructions Manual and Preventative Maintenance Manual; stipulation of the Manager's fees for the full term, indexed according to a stipulated formula utilizing the Consumer Price Index; default; general provisions. (Refer to Section 6.5)

Prior to occupancy by the Crown, the documentation relating to the Management Agreement is finalized.

.5 Technical Instruction

The Technical information and Instruction provided by PWC is the major variant in the Proposal Call Documents and the extent of such documentation depends on the Model utilized. It varies from a Performance Specification for Model 1 to full design, working drawings and specifications for Models 4 and 5. The information submitted by the developer in his Proposal is in direct response to the Proposal Call. Unlike other aspects of the Proposal Call which are fixed at the time of the Development Agreement, the technical items are subject to ongoing review and negotiation. (Refer to Section 5.6)

.5 COST EVALUATION OF DEVELOPERS' PROPOSALS

.1 In order to compare the costs of proposals received from the developers all amounts quoted by the developers in the Offer Form are taken into account. The total Present Value of each proposal is calculated and compared:

- Present Value of the rent quoted for the first Portion of the Term (five years) using the interest rate of Government of Canada five to ten years Negotiable Bonds plus the interest rate spread quoted by the developers.
- Present Value of rent for the last Portion of the Term (30 years). The same interest rate is utilized for each proposal as the Crown has some control on this interest rate.
- Tenant Fit-up Costs
- Present Value of the Lump Sum Payment required to purchase the building at the end of the Term (35 years).
- Present Value of the ten year Management Agreement.
- The total of the unit prices quoted multiplied by the estimated quantities of items required to complete the Tenant Improvements less the Provisional Cost Allowance included in the basic rent.

.2 All of the above are then totalled to determine which is the best price quoted.

.6 DESIGN DEVELOPMENT PROCESS

.1 Performance Specification by PWC, (Model 1)

.1 It is based upon the information provided in the Performance Specification and also on the conditions imposed in the General Information, Offer Form and Legal Documentation that the developer prepares and submits a Concept Design as part of his Proposal.

.2 The Performance Specification encompasses a variety of information including: planning and urban design criteria; mandatory and guideline information on type, use, size, relationship etc.; and performance and prescriptive requirements for materials and systems.

.3 The Performance Specification contains an appropriate balance between prescriptive criteria (when requirements are firm and specific) and descriptive criteria (where varying solutions are possible).

.4 The term "Performance Specification" adopted by PWC is not a performance specification in the pure sense but is a document which approaches a "performance brief".

.2 Concept Design by Developer, (Model 1)

.1 The Concept Design documents prepared by the developers in response to the Proposal Call will illustrate the site development, planning, massing, appearance, location of major components, and the overall intent and character of the project.

.2 As the selected developer will be contractually bound to meet the Performance Specifications, it is not normally required that the Concept Design submitted as part of the developers' proposal illustrate the engineering systems or technical details. These are provided by the developer during subsequent stages of the design development.

.3 The developers' Concept Designs are evaluated by an evaluation panel against the requirements of the Proposal Call. The panel also prepares comments or changes required to the Concepts. The financial component is evaluated by a separate panel. (Refer to Section 5.5) The selection of a developer is determined on best value based upon the assessment and blending of the Financial and Concept Design evaluation in order to provide an acceptable design at the lowest cost. The financial and design elements cannot be combined mathematically because the spread between developers in either element, rather than the actual ratings, influences any mathematical combination.

.4 The comments of the evaluation panel regarding changes or amendments and the Developer's acceptance of these are critical to subsequent stages of design development by the developer.

.5 When a developer is selected and upon acceptance of the Concept by the Department and acceptance by the developer of any required amendments to the Concept and when Treasury Board approval is received, the Development Agreement is executed with the selected developer.

.3 Concept Design by PWC, (Model 2)

.1 The Technical Document contained in the Proposal Call issued by PWC for Model 2 includes Concept Design Drawings. It also includes a specification which consists of a mixture of performance and trade specifications and provides an outline of engineering systems.

.2 The preparation of the technical document is normally achieved through a consultant to whom PWC has provided a project brief.

.3 The Proposal submitted by the developer does not include any drawings or design but does include a completed Questionnaire and financial proposal.

.4 The selection of a developer is made primarily on the basis of cost and also on the evaluation of the developer and his team.

.5 In some instances, where the design is of a particularly sensitive nature and in order to ensure continuity of the design philosophy, the Department may decide that the developer must utilize the architect and professional team, for the subsequent design development and construction Stages, who were engaged in the preparation of the Concept.

.6 Upon acceptance of a developers' proposal and approval by Treasury Board, the Development Agreement is executed.

.4 Final Design Development Stage by Developer, (Model 1 & Model 2)

.1 "Final Design Development" is sometimes also referred to as "preliminary design".

.2 The Final Design Development Stage includes preliminary drawings and an outline specification, for a clear and full understanding of the project, and showing the total design solution. All major decisions on the design, materials and systems will be completed.

.3 It is the developer's responsibility to demonstrate that the Final Design Development Documents are executed in accordance with the Concept and Proposal Call documents and any changes agreed upon. These documents are prepared at the expense of the developer. During the Design Development stages changes can be negotiated with the developer.

.4 The PWC role in quality control during the Final Design Development is to identify any areas of non-compliance. It is important that problems be resolved as early as possible in the development process.

.4 The cost of design work resulting from changes required by and authorized by PWC are paid for on a time basis.

.5 The cost of changes affecting the cost of the work are agreed upon in advance by PWC and the developer. The cost of changes is adjusted in cash, not rental, during the Construction Stage. Refer also to Section 5.5.

.6 Only upon acceptance by PWC of the Completed Final Design Development Documents, is the Ground Lease granted to the developer; this constitutes approval for the developer to proceed to the Working Drawings and Specifications, and Construction Stages. (In some instances there may be, by prior arrangement, agreement to grant the Ground Lease before full completion of Final Design Development. In such cases, the extent of completion required would be stipulated.)

.5 Final Design Development by PWC, (Model 3)

.1 The Technical Document contained in the Proposal Call issued by PWC for Model 3 includes Final Design Development Documents.

.2 The preparation of the Technical Document is normally achieved through a consultant to whom PWC has provided a project brief.

.3 The Proposal submitted by the developers does not include any drawings or design but does include a completed Questionnaire and financial proposal.

.4 Where design continuity is considered essential the developer will be required to utilize the architect and professional team who were engaged in the preparation of the Final Design Development for the subsequent design development and construction stages.

.5 The selection of a developer is made primarily on the basis of cost and also on the evaluation of the developer, his construction and management teams and design team where applicable.

.6 Upon acceptance of a developer's proposal and approval by Treasury Board, the Development Agreement is executed and the Ground Lease is granted.

.6 Working Drawings and Specifications by Developer, (Model 1, Model 2, Model 3)

.1 It is the developer's responsibility to demonstrate that the Working Drawings and Specifications adhere to all relevant codes and that they are executed in accordance with the Final Design Development Document and any changes agreed upon.

.2 The schedule for the completion of the Working Drawings and Specifications is the developer's responsibility.

.3 PWC does not approve the Working Drawings and Specifications prepared by the developer. The Departmental role is, rather, to monitor and review in order to ensure that requirements and contractual obligations have been met. The nature and extent of this role is different than it is in Crown Construct.

.4 All Final Working Drawings and Specifications are signed and sealed by the developer's consultant signifying acceptance of their legal responsibilities. The developer is also required to sign these construction documents guaranteeing their adherence to the terms of the agreement and any changes agreed upon.

.5 The cost of design work resulting from changes required by and authorized by PWC are paid for on a time basis.

.6 The cost of changes affecting the cost of the work are agreed upon in advance by PWC and the developer. The cost of changes is adjusted in cash, not rental, during the Construction Stage. Refer also to Section 5.5.

.7 Working Drawings and Specifications by PWC, (Model 4 & Model 5)

.1 The Technical document contained in the Proposal Call issued by PWC for Model 4 includes full plans and specifications and in Model 5 additionally contains as-built drawings of the part constructed by PWC.

.2 The preparation of the Technical Document is normally achieved through a Consultant to whom PWC has provided a project brief.

.3 The Proposals submitted by the developer do not include any drawings or design but do include a completed questionnaire and financial proposal.

.4 The Developer is normally required to utilize the architects and professional team for construction supervision who were engaged by the Department to prepare the Working Drawings and Specifications.

.5 The selection of a developer is made primarily on the basis of cost and also on the evaluation of the developer, his construction and management teams.

.6 Upon acceptance of a developer's proposal and approval by the Treasury Board, the Development Agreement is executed and the Ground Lease is granted.

.7 CONSTRUCTION PROCESS

.1 Introduction

.1 The construction phase for all Models is carried out by the developer. However, for Model 5 partial construction is carried out by PWC and the construction is completed by the developer.

.2 The Crown has a contract only with the developer. The Crown has no contract with the consultants, the contractors, subcontractors or suppliers.

.2 Responsibility for Construction and Supervision of Construction

.1 It is the developer's responsibility to implement the project in accordance with the terms of the contract. Responsibility for the construction and for construction supervision is with the developer and his professional consultants.

.2 The developer is expected to construct the work strictly in accordance with the Working Drawings and Specifications and in accordance with generally accepted construction practices and subject only to amendments which may be agreed upon by the Department.

.3 During the construction phase PWC, through the use of an inspection team, will perform all necessary inspections to ensure that the developer complies with the terms of his contract.

.4 Using the documents prepared previously by either the Crown or the developer, the PWC team will inspect the work of the developer in the delivery of the project. Results of on-site inspection of the project by PWC would be reported to the developer only if there is a breach of contract in which case the developer is required to rectify the work. The nature and extent of this role is different than it is in Crown Construct.

.5 PWC does not issue any form of approval to the developer. The Crown must take no action which could limit the professional liability of the developer's staff or their agents or take any other action that would transfer liability for construction to the Crown. Inspection of the work by the Crown does not relieve the developer of any of his responsibilities.

.3 Certification of Construction

.1 The developer's consultants are required to provide monthly certification that the work has been performed in accordance with the Working Drawings and Specifications, the terms of the contract and any agreed upon changes.

.2 For each phase of the work, ready for occupancy, an Interim Certificate of Completion for the phase of the work will be issued by the developer's consultant.

.3 Upon receipt of an Interim Certificate of Completion for a phase of the work, the Department, if satisfied, will issue an Acceptance of the Interim Certificate of Completion.

.4 For each phase of the work which has been fully completed, the developer's consultant will issue a Final Certificate of Completion to the developer and to the Crown that the work has been performed in accordance with the Working Drawings and Specifications.

.5 Upon receipt of a Final Certificate of Completion for a phase of the work, the Department will, if satisfied, issue an acceptance of the Final Certificate of Completion.

.6 Acceptance of the work or any phase of the work by the Department does not relieve the developer of any of his responsibilities.

.4 Changes During Construction

.1 The cost of changes affecting the cost of the work are agreed upon by PWC and the developer. They are paid for in cash and do not result in changes to the agreed-upon rental.

.2 The cost of changes is normally established through negotiation based on the cost of labour, plant and material as agreed upon from time to time by the developer and the Department. The developer, when requested, is required to submit a detailed statement of the cost to him of labour, plant and material.

.3 The Lease Purchase documentation contains a procedure for the resolution of disputes between the Developer and the Department of Public Works relating to the costs of contemplated changes to the work. A formula utilizing actual costs of labour and materials is provided for the determination of such disputes if the negotiation process fails.

.4 In the last resort, the Federal Court will make the final decision.

.5 General

.1 The developer can start the construction stage (in each model) at any time after the execution of the Ground Lease.

.2 The developer provides samples, shop drawings, construction photographs, Operations and Maintenance Manuals, and performs testing.

6. SPECIFIC ISSUES

.1 QUALITY ASSURANCE AND CONTROL

.1 The quality and character of the end-product, for Lease Purchase, including site suitability is considered as important as if it were Crown-construct.

.2 A very important aspect of quality assurance is the capability of the developer, his contractor and his property managers and, in models where design input is required, a prime aspect is the capability and quality of his design team.

.3 The two-stage Proposal Call, utilized primarily for the performance specification model of Lease Purchase, provides an opportunity to prequalify developers.

.4 The Proposal Call Document provides the statement of the desired quality and is therefore of prime importance in establishing quality and ensuring the appropriate degree of control.

.5 Quality assurance and control is achieved not only through the technical documents included in the Proposal Call but also by means of the process itself which includes the overall content of the Proposal Call, evaluation of the developer's proposals, the design development process and construction process, the process for fit-up and the qualifications of the developer and his team.

.6 The control of quality for Lease Purchase is generally more difficult to exercise than it is for Crown-construct. This is due in part to the decisions and responsibility assumed by the developer which are carried by the Crown in a Crown Construct Situation and to the greater degree of flexibility and choice offered the developer. (See paragraph .7 below.) It is recognized that in these choices there is an inherent danger in the developer "cutting corners" in order to save money and thereby decreasing quality. The processes for Lease Purchase techniques are continually being developed to guard against this.

.7 The nature and extent of PWC's monitoring role and control system is by necessity much less in Lease Purchase than it is in Crown-construct. In Lease Purchase, the developer assumes liability and responsibility for that part of the work which he carries out. In all instances in Lease Purchase, the developer carries out the Construction and is responsible for it. When the developer prepares working drawings and specifications he is responsible. PWC does not control the construction and in the instance where the developer prepares working drawings and specifications does not control them. PWC's role is primarily to comment on non-compliance to instructions and requirements and notify the developer of breach of contract rather than to approve as it would in Crown-construct. However, in extreme cases of breach of contract by the developer, the Crown can terminate the agreement.

.8 The degree and ease with which quality control can be exercised in Lease Purchase projects (as well as in Crown-construct projects) is related to the degree of direct design and construction input by PWC. Therefore the full drawings and specifications (Model 4 or Model 5) assure a greater level of quality control. The Performance Specification Model (Model 1), provides for less quality control and the full nature of the final product is not known in advance.

.9 In the models where the developer is required to prepare the Final Design Development (Models 1 and 2) the Ground Lease is not granted until the Final Design Development is accepted by PWC. This provides an added measure of quality control within the process.

.10 The requirement that the developer assume the management, operation and maintenance of the building (usually for 10 years) provides an incentive to the developer to provide quality materials and equipment and an efficient building. The Warranty Agreement and security deposit provide further incentives (Refer to Section 6.5).

.2 **REIAS (Real Estate Investment Analyses System)**

.1 In order to compare the cost of Leasing, Crown Construction, Purchase of property and Lease Purchase options, financial analyses are carried out utilizing REIAS. This method of comparison takes into consideration the total annual cost and in each case escalates it for the life of the project, using as escalation an estimate of the CPI. It then discounts it at today's Government borrowing rate. The result is the total occupancy cost of each option, or how much would be invested today in order to pay the occupancy cost for the full period (usually 35 years).

.2 These analyses which provide Present Value comparisons are included in Treasury Board Submissions.

.3 Sensitivity analysis is prepared for internal use but is not always used in reporting to Treasury Board.

.4 For the REIAS analysis the discount rates are provided by the Department of Finance. The construction cost estimates and rental estimates are provided by Regions.

.5 REIAS also provides full cycle occupancy cost.

.6 The REIAS Lease Purchase module was developed by PWC and had been accepted by Treasury Board some time ago. Current Treasury Board officials will be reviewing it in the near future and a REIAS audit is currently underway.

.7 The validity of the data inputs utilized, such as construction cost estimates and rental estimates are discussed in the following paragraphs 6.3 - "Cost Comparisons".

.3 FINANCE RELATED COMPARISONS - Lease Purchase vs. other Modes of Delivery

.1 Introduction

.1 The comments which follow are based on and are an interpretation of detailed cost analyses carried out for PWC projects.

.2 The following statements relate to cost comparison only and do not examine other advantages and disadvantages which are covered elsewhere in this document.

.2 Lease Purchase vs Leasing

.1 In Lease Purchase, the developer commits himself to a rent formula for the whole term. The rent is sometimes fixed for the whole term but usually is adjusted according to a pre-established formula reflecting best available current financing interest rates. In standard leasing, after each term, the rent is adjusted according to the current market at that time which historically has increased at the rate of inflation. If market values increase, then Lease Purchase is advantageous. However, if Lease Purchase is entered into during an abnormal inflated period of economy, (e.g. Calgary in the late 70's and early 80's) then it could be disadvantageous to the Crown if market rental costs subsequently decrease for a protracted period. A careful analysis of the market is required, particularly during periods of rapid inflation.

.2 Departmental analysis based on projecting periodic market rate increases in standard leases, renewable at five year intervals, indicates that Lease Purchase (in any model), or the purchase option carried out at any stage, is less costly to the Crown than standard long term leasing. This takes into consideration the potential for some discrepancy in estimates for rental costs and the fact that the quality of the products may differ. It would however, be the same cost to the Crown for a 35 year lease with rent fixed according to the same terms and conditions as Lease Purchase if such leases were available. However, the industry does not normally provide 35 year leases. The standard lease terms available, at a predetermined rate, are normally five years with a maximum of ten years.

.3 In Standard lease arrangements, tenant improvements required by and paid for by the Crown (such as partitioning, carpets etc.), in the absence of specific agreement, belong to the building owner and are often reflected in new rental rates for future terms. In Lease Purchase such improvements are included in the original rent and are not not reflected in the rent adjustments.

.3 Lease Purchase vs Crown Construct

.1 Lease Purchase does not require the same major Capital expenditure by the Crown as does Crown-construct.

.2 Lease Purchase is a long term commitment to expend public funds and commits future governments to fixed expenditures which Crown-finance does not do. In Crown-finance, however, Bonds are redeemed and re-issued.

.3 If accommodation acquired through Lease Purchase is no longer required, at some future date, this could result in substantial cost to the Crown. A similar situation could ensue with Crown-construct if the building was not marketable. In both cases there is the option to minimize losses by leasing or selling the properties.

.4 In examples of analyses carried out in the Department by Real Estate Services, the mathematics has indicated that Lease Purchase over 35 years, generally is the same cost to the Crown, as is Crown-construct. However, it is difficult to make true comparisons for the reasons stated below.

.5 A true cost comparison of Lease Purchase and Crown-construct is difficult to achieve because: -

- comparisons made are between a finite lowest ("bid") cost for Lease Purchase versus an estimated cost of construction. A true comparison could only be made if bids were also received for the same project for Crown-construct

- the developer/construction industry will not submit simultaneous proposals for the Crown-construct mode and Lease Purchase mode as it is too expensive for them to do so

- comparison in cost is even more difficult for a Performance Specification Model where construction cost estimates are at best a class D estimate and no building design has taken place.

.6 The cost of construction to the developer in Lease Purchase is normally less than it would be for Crown-construct.

.7 The cost of financing by the developer with a net net lease allows him to obtain financing at a minimal difference to Crown borrowing. (Refer to Section 6.10)

.8 Taking into account the method used for comparison, the variables in financing, and based on Departmental analysis, a Lease Purchase over 35 years and Crown-construct are generally estimated to be the same cost to the Crown. That one is economically more viable than the other cannot be unequivocally proven in most instances.

.4 Lease Purchase over 35 Years vs Lease Purchase "On Day One"

.1 Departmental analyses indicate that usually Lease Purchase "on day one" should be of equivalent or less cost to the Crown than Lease Purchase over 35 years.

.2 "Day One" means the Crown exercising its option to purchase as soon as the building is completed rather than at a later date.

.4 LAND OWNERSHIP

.1 In most existing Lease Purchase transactions, the Crown owns the land and leases it to a developer for a specific term, usually 50 years. As a matter of prior practice the rent for the land has been for a nominal sum for as long as the Crown is a tenant under the Building Lease.

.2 Lease Purchase transactions can also be achieved on privately owned land or in utilizing air rights in specific situations.

.3 The advantages of Crown ownership of land include that: - it affords the possibility to control the specific location and it removes the site as an element in comparative analysis in the evaluation of developers proposals.

.5 BUILDING MANAGEMENT - O&M

.1 In PWC Lease Purchase transactions, the developer is normally required to enter into a "Management Agreement" for the first ten years of Crown occupancy. The cost for the management, operation and maintenance is normally based on a fixed price and is adjusted annually using the Consumer Price Index. (See Section 6.8) Additionally, under the "Management Agreement" the developer is responsible for the costs and execution of repairs and maintenance for the first ten years.

.2 The reason for having the developer carry out the management for the first ten years is based on the assumption that this provides an added incentive to the developer to deliver a better quality product (and one which is more economical to maintain and operate) and it also has the effect of guaranteeing all repairs including equipment for the first ten years of occupancy.

.3 The responsibility of the developer for the cost and execution of all repairs for the first ten years of Crown occupancy is now included in more recent Lease Purchase transactions. In past arrangements the Crown paid for all repairs.

.4 A Management Agreement and net lease used in Lease Purchase transactions and a gross lease used in Standard Leasing are of similar overall cost to the Crown. However, the Management Agreement and net lease provides the opportunity for a direct pass-through (i.e. rent can be paid directly to the developer's lender rather than to the developer). It also provides the options to the Crown of taking over the management at the end of the ten years or of making other arrangements or renewing the agreement with the developer.

.5 A Warranty Agreement is also provided for the eventuality that the Crown would choose to terminate the Management Agreement at an early date. The Warranty Agreement provides the developer's guarantee or assurance to the Crown that the developer will replace or repair and make good any structural defects in materials and workmanship for a period of ten years and make good any defects in any non-structural systems for a period of two years.

.6 A substantial security deposit ($1 million in the case of Canada Place Edmonton) is included under the Security Deposit Agreement which provides protection to the Crown in case of the developer's non-performance either under the obligation of the Warranty or the Management Agreement. This security deposit can be applied at the end of the ten year occupancy if the developer has deferred repairs.

.6 TERMS OF GROUND AND BUILDING LEASES

.1 The Ground Lease is provided for a period of 50 years, whereas the Building Lease is for a period of 35 years.

.2 The reason for the longer Ground Lease is to allow the developer to obtain better financing and in some instances to obtain Capital Cost Allowance.

.3 Capital Cost Allowance is the amount of depreciation allowed to be written off the value of the building by the Department of National Revenue. The Capital Cost Allowance has the effect of reducing net income or revenue properties and is regarded as an incentive to building construction.

.4 In the 15 years after the termination of the Building Lease if the Crown has not exercised its options to purchase, the Crown can lease the building according to a formula pre-determined at the time of the agreement, or the developer can lease the premises to someone else.

7. TIME

.1 Although the time comparison between Crown-construct and Lease Purchase, for the same type of Model, requires further analysis PWC experience indicates that Lease Purchase can be a faster way of delivery when the comparison is made from the same base, that is, from the stage where contracts are signed. There is generally no difference in the time required for the front-end planning and to perform the design stages. In the instances where the developer chooses not to tender trade packages, (because he does not need to abide by government regulations regarding tendering) time, during the construction phase, is reduced. Also the developer has an incentive to build faster because of the cost of money to him, whereas in Crown-construct, the Contractor receives progress payments. In these times of high interest rates, time is important.

.2 The purchase or lease of an existing building provides the fastest solution to an accommodation requirement.

.8 CONSUMER PRICE INDEX

.1 The Consumer Price Index (CPI) is utilized to adjust, annually, the amount quoted by the developer under the Management Agreement.

.2 Recently, a study was undertaken to select the most appropriate price indices to be used in the calculation of Operation and Maintenance (O&M) escalation rates. Four separate potential index methods were examined including:

A. All items CPI for Canada
B. All items CPI for Canada excluding property taxes
C. PWC weighted average of selected CPI components with property taxes
D. PWC weighted average of selected CPI components excluding property taxes.

.3 As a result of extensive testing, it was concluded that although (A) All items CPI for Canada and (B) All items CPI for Canada excluding property taxes produced practically identical values, the CPI all items for Canada should be adopted for escalation purposes since it is universally recognized as a time measure of inflation produced by an independent agency and forecast data are available from numerous public and private sector sources.

.9 INTEREST RATES AND INFLATION

.1 The discussion of interest rates and inflation plays a significant role in the determination of the cost of financing Lease Purchase projects. It is clear that there is direct linkage between inflation and interest rates but the exact magnitude of this linkage is

uncertain. Basically as inflation rises so do interest rates and hence the overall cost of financing a Lease Purchase building. A corollary of this theory is that interest rate "creep" remains more or less in lock step with inflation.

.10 **CROWN BORROWING VS PRIVATE BORROWING**

.1 The comparison of the Crown's borrowing power versus private sector borrowing of various developers is difficult. On the one hand, the cost of financing to the Crown (i.e. Crown's borrowing rate) is predicated on the calculation of the average market interest yield for various issues of Government of Canada negotiable bonds. This average yield varies over time but represents, more or less, the effective cost of financing to the Crown for self-financed projects. On the other hand, private sector developers may finance new projects from any one or a combination of sources including retained earnings, new equity financing, debt financing through a variety of sources such as Canadian chartered banks, trust companies, other lending institutions and/or individuals and even offshore money which is available to large national or multinational development companies. Also, another factor is that negotiations play a critical role in rate setting. Ultimately the cost of this financing is known only to the developer. The Crown's knowledge of the developer's financing cost is basically only referenced in developers proposals. The rates quoted consist of a base financing rate, which developers are directed by the Crown to use when submitting proposals, plus a "interest rate spread" which supposedly reflects the developer's effective cost of financing. In effect, the developer's cost of money may be less than the quoted rate.

.2 Hence, the calculation of exact differences between the effective cost of borrowing of the Crown and private developers is impossible to determine. It may be stated however that when the interest rate spread quoted is less than 1%, the nominal cost of money differential is negligible.

.11 **RISK**

.1 There is a risk that if market rents decrease, and interest rates do not decrease, (as in Alberta in the late 70's and early 80's) then the rent being paid under a Lease Purchase Agreement could be higher than market rents.

.2 In a Performance Specifications Model of Lease Purchase there is a risk of not having complete assurance of quality and in not knowing in advance the product which will be developed.

.3 An important risk factor to consider when comparing Crown finance versus Lease Purchase mode of delivery is the relative financing cost. In the case of a Crown finance project the Crown bears the essential cost of financing; in the case of Lease Purchase projects,

the Developer bears the risk by financing the building but recoups the cost of financing from the Crown over an extended period of time. Despite this basic difference in assumption of risk, it may be said that, assuming the cost of money is essentially the same for a large developer as it is for the Crown (i.e. Dept. of Finance argues that a spread of ¾% to 1% equates to the cost of borrowing by the Crown) and that risk is measured over the life of the asset, the risk burden to the Crown is equivalent regardless of whether it chooses to finance via Crown financing or Lease Purchase (Developer) financing. This risk equation may be tilted somewhat in favour of Lease Purchase (Developer) financing (all things being equal) if the Developer is able to obtain a Capital Cost Allowance and passes on savings to the Crown. This risk equation <u>may</u> also be tipped in favour of a Lease Purchase (all things being equal) when the Developer passes on any other savings to the Crown in the form of lower rents.

.1 DATA SUMMARY - EXISTING LEASE/PURCHASE

	Esplanade Laurier	Place du Centre	240 Sparks	Terrasses de la Chaudière	Guy Favreau	D.V.A. Charlottetown	Scarborough	Cornwall	Chatham	Edmonton
Rentable Area (m^2)	78,182	37,940	82,960	169,507	53,135	13,246	34,850	6,826	5,700	68,924
Date of Lease	75-07-01	77-12-01	79-01-01	77-07-01	83-12-01	84-04-01	84-12-01	84-12-01	1985	1988
P.V. of Rental	$60.3 M	$29.7 M	$65.9 M	$143.9 M	$87.6 M	$15.6 M	$38.9 M	$9.6 M	$4.9 M	$105 M
First Term of Lease	20 yrs	30 yrs	35 yrs	15 yrs	5 yrs	5 yrs	5 yrs	5 yrs	5 yrs	5 yrs
Formula for Rent in First Term	Negociated	Negociated	Tendered	Financing	Financing	Spread	Spread	Spread	Spread	Spread
Rent for 1st Term ($000)	$5,849	$3,007	$6,100	$13,953	$11,234	$2,239	$5,199	$1,408	$625 Est.	$15,357 Est.
Rent per m^2	$74.81	$78.90	$73.53	$96.84	$211.42	$169.02	$149.20	$209.33	$110.00	$222.80
Date of 2nd Term	95-10-01	N/A	N/A	1992	88-12-01	89-04-01	89-12-01	89-12-01	N/A	N/A
Formula for 2nd Term Rent	Financing	N/A	N/A	Financing	Financing	Financing	Financing	Financing	Financing	Financing
Date of Option to Purchase	20,30 yrs	30 yrs	20,25,30 yrs	35 yrs	20.35 yrs	5.10.15 every 5 yrs	20,35 yrs	2.35 yrs	20,35 yrs	20,35 yrs
Est. Amount of Option to Purchase at End of Building Lease	$25 M	$6 M	$1.00	$54 M	$30 M	$1.00	$10 M	$1.00	$1.00	$1.00
O & M Term	30 yrs	10 yrs	N/A	35 yrs	N/A	N/A	10 yrs	10 yrs	10 yrs	10 yrs
O & M Formula	Cost+Esc.	Cost+Esc.	N/A	Cost+Esc.	N/A	N/A	Tender+ C.P.I.	Tender+ C.P.I.	Tender+ C.P.I.	Tender+ C.P.I.

.2 CAPSULE DESCRIPTIONS OF EXISTING PROJECTS

.1 L'Esplanade Laurier - Ottawa, Ontario

- PWC issued a general Proposal Call for a large amount of office space to meet the Crown's expanding accommodation requirements in Ottawa. The Proposal Call based on the Standard Lease requirements asked for rental and management rates for both Lease Purchase and Standard Lease.

- A number of proposals were received and some accepted for Standard Leasing. Only one firm proposal, from Olympia York, was received for Lease Purchase. This developer's proposal was not exactly as requested, however, after negotiation, the proposal was accepted.

- The site is owned by the developer and is included in the purchase option.

- The building was 80% complete at the time of the proposal by the developer.

- Lease Purchase of 78,182 m2 (rentable) office space for Crown use. The development also includes retail commercial which is the developer's.

- Letter of intent signed in June 1975. Date of lease was July 1975. This was PWC's first Lease Purchase.

.2 Place du Centre, Hull, Quebec

- This project was the result of a tri-party agreement between the Province of Quebec, the NCC and PWC. The building is part of the Place du Centre Development sponsored by the provincial/municipal governments. The Federal Government was requested to participate by the province in support of the re-development of the core of the City of Hull.

- The Federal building is located on Crown-owned land.

- The contract was negotiated directly by PWC with Cadillac Fairview, the developer selected by the Province and the NCC for the overall project.

- The NCC prepared the Master Plan. The design was by the developer to meet PWC requirements.

- Lease Purchase of 37,940 m2 (rentable) office space for Crown use. The remainder of the development including retail commercial is the developer's.

- The commitment was made in September 1975 and the date of the lease was December 1977.

.3 240 Sparks Street - Ottawa, Ontario

- A decision was made by the Crown to develop a site in Ottawa to revitalize the central area. NCC expropriated the site and the expropriation costs were reimbursed to the NCC by PWC.
- PWC, through outside consultants, prepared Full Plans and Specifications as well as constructing the sub-structure up to grade.
- A Proposal Call was issued to complete the project and (A) to lease the land and sub-structure at a nominal $1.00 PA and to lease back or (B) to purchase the land and sub-structure and lease back.
- 4 proposals were received, only one of which provided both options. Olympia and York were the successful developers.
- Lease Purchase of 82,960 m2 (rentable) office space for Crown use and also the retail commercial and parking.
- The commitment was made in August 1975. Date of the Lease was January 1979.

.4 Les Terrasses de la Chaudiere, Hull, Quebec

- Unsolicited proposal by Campeau Corporation.
- The NCC had been endeavouring for 5 years to assemble this site but could not acquire part of the site. Campeau Corp. assembled the site and offered to construct a complex as part of the Crown's development in Hull. The site is 20% Crown-owned and 80% developer owned.
- The complex was designed by the developer to meet PWC requirements.
- The rental rate and terms were negotiated with the developer.
- The Crown has the right of first refusal to purchase all or any part of complex including the site.
- Development includes commercial space, hotel and parking structure which the developer retains for 35 years.
- Lease Purchase of 169,507 m2 (rentable) office space for Crown use.
- Commitment made in July 1976. Date of lease was July 1977.

.5 Shediac, N.B.

- A Proposal Call based on PWC Concept Design was issued and 4 proposals received.
- A decision was made to purchase on day one at a cost of less than $5 million.
- The purchase date was 1981 - and the developer is responsible for O&M for 5 years from the date of purchase.

.6 Guy Favreau Complex, Montreal, Quebec

- The project had been in the planing stages for many years with the intention of providing a Federal presence in Montreal.
- PWC, through outside consultants, prepared Full Plans and Specifications as well as constructing the sub-structure to grade.
- A Proposal Call was issued requesting prices to A) complete the construction of the podium as Crown construct, B) to complete the office towers and lease purchase to the Crown.
- At the time of the Proposal Call interest rates were in the range of 20% and not many developers were willing to take the risk. Only one proposal was received, that of Campeau Corporation who after negotiation was awarded the contract.
- Lease Purchase of 53,135 m2 (rentable) office space for Crown use. Development also includes 348 residential units through an arrangement with CMHC. The sub-structure and podium which contain parking and commercial retail are Crown-owned.
- The date of the lease was December 1983.

.7 D.V.A. Charlottetown, P.E.I.

- A decision was made in the late 1970's to build a building in Charlottetown to commemorate the Veterans of the last World War. The site is Crown-owned.
- PWC, through outside consultants, prepared Full Plans and Specifications as well as constructing the concrete super structure as a Crown construct project.
- A Proposal Call was issued to complete the project as A) a Lease Purchase or B) the developers could also make other proposals which in their opinion would be advantageous to the Crown.

- 5 proposals were received. 2 proposals were received under the Option B and neither were considered as the firm rentals were based on too high an interest rate financing. Rampart Enterprises was the successful developer.

- Lease Purchase of 13,246 m2 (rentable) office space for Crown use.

- The date of the lease was April 1984.

.8 GOCB SCARBOROUGH, ONTARIO

- In the late 70's a decision was made to build a major Federal Government building in Scarborough and one which would be exemplary in Energy Efficiency utilizing solar energy.

- PWC, through outside consultants, prepared Full plans and Specifications.

- The site was purchased by PWC and subdivided to provide developers or others with the option to lease a portion of the site and develop a building for their own use.

- In response to the Proposal Call, four Proposals were received. Only one response included the development of the adjacent site and did not provide sufficient revenue to the Crown to warrant consideration.

- Rampart Enterprises Ltd., who were active in the Scarborough area submitted the best price and were awarded the contract.

- Lease Purchase of 34,850 m2 (rentable) office space for Crown use.

- The date of the lease was December 1984.

.9 GOCB CORNWALL, ONTARIO

- A Proposal Call was issued utilizing PWC Performance Specification. This was the first Lease Purchase project utilizing the Performance Specification Model.

- Seven proposals were received from developers. The evaluation was carried out by totalling the financial rating and design rating. However the developer having the highest total points and the best financial rating submitted a design which was not considered to be acceptable. The developer was asked to re-examine his design submission and as it was still not acceptable, the second ranked developer, Cordel Developments Corp. was asked to re-examine their design submission. After the re-design was considered to be acceptable Cordel was awarded the project.

- Lease Purchase of 6,826 m2 (rentable) office space for Crown use.
- The site is Crown-owned.
- The date of the Lease was December 1984.

.10 GOCB CHATHAM, ONTARIO

- This was a pilot project for National Health and Welfare to decentralize and build small units across Canada to accommodate Regional Income Security Programs Offices.
- A Proposal Call was issued utilizing PWC Concept - Model 2. The concept was prepared in-house by Ontario Region. In response to the Proposal Call, eight proposals were received.
- The successful developer was Elron Developments.
- Lease Purchase of 5,700 m^2 (rentable) office space for Crown use.
- The date of the Lease is 1985.

.11 CANADA PLACE - EDMONTON, ALBERTA

- The site, a City super block was assembled by PWC, through land exchange, in order to provide a comprehensive redevelopment in the Edmonton city core and to provide a Federal presence in Edmonton.
- Site capacity was greater than Crown requirements and developers were given an opportunity to provide space additional to Crown needs. At the time of the Proposal Call, Edmonton was in deflated economy - therefore response by developers to provide additional space was minimal.
- This was a 2 stage Proposal Call, and the first project to be carried out on a 2 stage basis. Model 1 (PWC Performance Specification) was utilized in the second stage.
- In response to the first stage Proposal Call which closed in July 1983, 12 proposals were received. Of these seven were selected to participate in the second stage.
- The second stage closed in May 1984 and three proposals were submitted.
- Trizec Corporation, having submitted the best financial proposal, a separate hotel proposal to the City and having the best design submission was clearly the successful proponent.

7. EXISTING LEASE PURCHASE PROJECTS

- Lease Purchase of 58,814 m2 rentable office space, 5,110 m2 storefront space, 5,100 m2 storage and 875 parking spaces for Crown use. Development also includes 4,650 m2 commercial retail space and 9,200 m2 office space for developer's use and parking space for the City of Edmonton. The development also includes a hotel by the developer with a separate arrangement with the City.

- The date of the lease is 1988.

8. EXTERNAL CONCERNS

.1 **LEGALITY OF LEASE PURCHASE - Department of Justice - re borrowing**

.1 In March 1982 the Department of Justice, with the advice of outside counsel (a former Chief Justice of the federal Court of Appeal) examined, upon a request of PWC, the validity the Lease Purchase Agreement, specifically for the DVA project in Charlottetown, in light of Section 36 of the Financial Administration Act. The issue was whether such a transaction would constitute a borrowing by the Crown.

.2 The opinion of the acting Deputy Minister was that a Lease Purchase transaction as drafted for Charlottetown DVA does not fall within the prohibition of Section 36 of the Financial Administration Act and does not constitute a borrowing by the Crown within the meaning of that section. The opinion went on to suggest that PWC consider the possibility of introducing legislation dealing specifically with the issue. Bill C-13 which amended the Public Works Act and the Public Lands Grants Act gave the Crown authority to lease land still required for public purposes provided the Crown obtains the right to occupy the building to be constructed on the land. This in effect describes a lease purchase transaction. It can therefore be assumed that a lease purchase transaction is legal provided it is not illegal for other reasons. That is why all lease purchase documents have, and must continue to be, approved by Justice lawyers. It was not possible to draft Bill C-13 in such a way as to describe a lease purchase transaction and declare that it was not a borrowing.

.3 Certain advice and guidance in the case of preparing the agreements was provided to the Department by the Department of Justice.

.4 It is the opinion of PWC Legal Services that all Lease Purchase transactions to date do not contravene Section 36 of the Financial Administration Act and this has further been demonstrated by the fact that lenders are not concerned in putting up a mortgage to the developer and thereby accept the legal status of these transactions.

.2 **LEGALITY OF LEASE PURCHASE - Department of Justice - Issue of disposition of Land for Public Purposes**

.1 In November 1983, the Department of Justice, upon a request from PWC, examined the validity of Lease Purchase transactions in light of S.4 of the Public Lands Grants Act and S.39 of the Public Works Act, as it existed at that time, and which stipulated that lands could only be leased if they "are not required for public purposes".

.2 Bill C13 amending the Public Works Act and Public Lands Grants Act, including amendments related to Lease Purchase, was consented to 26 February 1985. The Act removes the condition that lands to be leased or sold "are not required for public purposes".

.3 AUDITOR GENERAL'S CONCERNS

.1 The Auditor General report for the year ending 31 March 1984 expresses a number of concerns related to the Department's Lease Purchase transactions. These are noted in the following together with the PWC response.

.2 - AG 13.44, that "after completion, subject to normal warranties, the building is operated, maintained and repaired by the Department, and the developer has few further expenses in connection with it. That is, the arrangement is fully net; all costs of maintaining, repairing and operating the building are done by the Department" ... "In effect, most of the risks and benefits of ownership are assumed by the Crown".

- PWC response - Under current Lease Purchase transactions, after completion, the building is not operated, maintained and repaired by the Department. The developer, for the first ten years of Crown occupancy is normally responsible for the operation and maintenance and repairs under the "Building Management Agreement" and the cost to the Crown is normally based on a fixed price and is adjusted annually using the Consumer Price Index.

.3 - AG 13.44, "Under the agreement, the Department makes monthly payments which are based not on fair market rentals but on amortization of the construction and financing costs quoted by the developer.

- PWC response - This is correct. However, past experience has shown that the result is more advantageous to the Crown, in the long term.

.4 - AG 13.45, "Because a private developer's borrowing power is less than the Crown's, the financing costs of Lease Purchase acquisition are considerably higher than those of other Crown-financed acquisitions." ....

- PWC response - agree that financial costs are higher, however, past experience has shown that the difference is minimal and not considerably higher.

.5 - AG 13.46, "The Department of Public Works should disclose to Parliament the full cost and future funding requirements arising from acquisition of properties through Lease Purchases".

- PWC response - The Department is now reporting the full cost and future funding requirements under Public Accounts Instruction Manual, Detailed Instructions Chapter II.

.6 - AG 13.42, AG comments in reference to contravention section 39 of the Public Works Act.

- PWC response - Recent amendments to the Public Works Act and Public Lands Grants Act, have removed any doubt concerning the legality of the transaction (Refer also to Section 3.2 External Concerns - Legality of Lease Purchase for further explanation).

.7 - AG 13.52, "In addition to the problems concerning the leasing of Crown-owned sites, there were conflicting opinions given to the Department regarding the borrowing done to finance the transactions.

- PWC response - The Deputy Minister of Justice has stated that a Lease Purchase transaction, as drafted for the Charlottetown DVA, does not constitute a borrowing by the Crown. (Refer also to Section 3.1 External Concerns - Legality of Lease Purchase for further explanation.)